IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 11, 2004 Session

ERIC TETER v. REPUBLIC PARKING SYSTEM, INC.

Appeal from the Chancery Court for Hamilton County
No. 01-1311 W. Frank Brown, III, Chancellor

No. E2003-02735-COA-R3-CV - FILED OCTOBER 29, 2004

In this employment law matter, Eric Teter brought suit against his former employer, Republic Parking System, Inc. ("RPS"), alleging that it had breached Teter's employment contract when it refused to honor the severance pay provisions alluded to in the contract. RPS denied that it had breached the contract, instead contending, *inter alia*, that the plaintiff was guilty of "gross misconduct" which barred his claim. The trial court granted the plaintiff's motion for summary judgment, holding that the plaintiff was entitled to $795,037.35 under the severance pay provisions. In addition, the trial court awarded the plaintiff prejudgment interest at the rate of 10% per annum. RPS appeals, arguing (1) that the trial court erred in determining the plaintiff was discharged by RPS; (2) that the subject severance pay provisions are not implicated by the facts of this case; (3) that the severance pay provisions constitute an illegal penalty; (4) that RPS should be permitted to rely upon after-acquired evidence of Teter's misconduct to deny him severance pay; and (5) that, in any event, the plaintiff was only entitled to receive 2 times his annual salary and bonus under the severance pay provisions. In addition, RPS contends that the trial court abused its discretion when it awarded prejudgment interest to the plaintiff. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and WILLIAM H. INMAN, SR.J., joined.

John C. Harrison and William H. Horton, Chattanooga, Tennessee, for the appellant, Republic Parking System, Inc.

B. Stewart Jenkins, Chattanooga, Tennessee, for the appellee, Eric Teter.

OPINION

I.

RPS is a Tennessee corporation. Its principal place of business is located in Chattanooga. The company's chief executive officer is James Berry. Sometime prior to November 27, 1995, the plaintiff entered into discussions with Mr. Berry regarding the plaintiff's potential employment with RPS. At that time, the plaintiff was employed as the general manager and vice president of European operations for Central Parking System, a competitor of RPS. During the course of their discussions, the plaintiff indicated to Mr. Berry that he desired some sort of protection in the event his employment with RPS was terminated. It appears that the two agreed on a severance package as an inducement for the plaintiff to leave his then-present employment, where he was making a higher salary.

On or about November 27, 1995, the plaintiff signed an employment agreement ("the 1995 agreement") with RPS, under the terms of which the plaintiff became the regional vice president of RPS. The 1995 agreement includes the following severance pay provisions:

> In the event Employee is discharged for any reason other than gross misconduct, fraud, neglect of job responsibilities or voluntary termination, he/she will receive the following as severance pay.
>
> An amount equal to twelve (12) month's [sic] base salary, plus an amount equal to Employee's prior twelve month bonus/commission payments.

In January, 1997, the plaintiff signed a new employment agreement with RPS ("the 1997 agreement"), with an effective date of January 1, 1997. In the 1997 agreement, the plaintiff became the vice president of urban parking operations, with an annual salary of $100,000, plus 15% of the monthly profits over $12,500 generated from certain cities in the plaintiff's region; these cities were located both east and west of the Mississippi River. The 1997 agreement, which was signed sometime after April 1, 1997, contained the following additional pertinent provisions:

> EMPLOYEE agrees to serve in such capacity, to perform all the duties required thereof, including but not limited to, handling personnel, directing operations, maintaining true and correct records, reporting same to EMPLOYER as required, and to give his full time and best efforts thereto;
>
> * * *
>
> This contract may be terminated by either party upon One Hundred Twenty (120) days written notice unless EMPLOYEE is discharged or resigns as a result of the commission by him or her of an act involving theft, embezzlement, fraud or intentional mishandling of

> Company funds, in which event such termination will be effective immediately. *In the event EMPLOYEE is discharged for any reason other than gross misconduct, fraud, embezzlement, theft or voluntary termination, EMPLOYEE will be entitled to severance pay under the terms of the "Employment Protection Plan – Change in Ownership Structure" provision attached.*

(Numbering of paragraphs in original omitted; capitalization in original) (emphasis added).

Before the 1997 agreement was signed, on March 10, 1997, the plaintiff sent a memorandum to Mr. Berry, in which the plaintiff submitted a proposed "arrangement to protect our key executives in the event of a sale or change in ownership." Attached to the memorandum was a document entitled "Employment Protection Plan," which provides as follows:

> **A.** In the event that James C. Berry is no longer the active Chairman and CEO of EMPLOYER or EMPLOYER is sold to an outside interest, then in such event EMPLOYEE has the option of voluntarily resigning, provided such resignation becomes effective within one hundred eighty (180) days from date of change or sale with said lump sum payment as provided below being made on the date that such voluntary resignation becomes effective.
>
> | **Change in Ownership Structure** | **Employment Protection Plan** |
> |---|---|
> | Years 1 – 2 of Employment | 1.0 times previous years salary and bonus |
> | Years 3 – 4 of Employment | 2.0 times previous years salary and bonus |
> | Year 5+ of Employment | 3.0 times previous years salary and bonus |
>
> **B.** Furthermore, in the event that EMPLOYER goes public the value of EMPLOYEE'S previous year's bonus payment multiplied by a multiple of seven during the first two years of employment and by a multiple of four and one half in years three and beyond, to be paid in stock or cash as determined by the Chairman and CEO of EMPLOYER. Said payment to be made within ninety days (90) of public listing.

> No payments under either of the above will be made should EMPLOYEE'S employment with EMPLOYER voluntarily cease or be terminated for gross misconduct, fraud, embezzlement or theft.

(Bold type, underling, and capitalization in original).

Mr. Berry agreed to the plaintiff's suggestion and, on April 16, 1997, Mr. Berry, on behalf of RPS, and the plaintiff, on his behalf, signed the "Employment Protection Plan" with the terms set forth above.

The plaintiff continued his employment under the 1997 agreement for the next four years, and in each of those four years, the urban division had increased profits. In March, 2001, Mark Huth became president and chief operating officer of RPS. Mr. Berry continued as the CEO of RPS. Between March, 2001, and August, 2001, Mr. Berry and Mr. Huth determined that the urban division needed to be restructured, which restructuring would include a change in the plaintiff's job responsibilities. The executives decided to split the urban division into two regions: one east of the Mississippi River and one west of the Mississippi River. The plaintiff, it was determined, would be in charge of the division east of the Mississippi River, with the exception of Charleston, South Carolina and Ann Arbor, Michigan.

On August 10, 2001, Mr. Huth met with the plaintiff and informed him of this proposed change. The proposed contract provided for an increase in the plaintiff's base salary from $100,000 per year to $160,000 per year, but the plaintiff's bonus structure was changed to only 12.5% of the profits over and above those generated in the year 2000, which had been the division's most profitable year to date. In addition, the proposal stated that the plaintiff's division was to be cut in half, to include only those cities east of the Mississippi River, save Charleston and Ann Arbor. Unlike the 1997 agreement, the proposed contract did not contain a severance package.

At a meeting with Mr. Berry and Mr. Huth on August 13, 2001, the plaintiff rejected the proposed contract. Mr. Berry and Mr. Huth then made a second proposal to the plaintiff, offering a base salary of $125,000, but a bonus based upon 12.5% of all profits generated from the urban division cities east of the Mississippi River, including Charleston and Ann Arbor. In addition, the executives presented two other options to the plaintiff. He could accept an immediate payment of $265,000 as severance pay, or he could agree to a one-year trial period under the new proposal, with either party having the option to terminate the contract. If either party terminated the contract after the one-year period, the plaintiff would still receive the $265,000 severance pay.

The plaintiff rejected all of these proposals and made it clear that he only wished to continue working for RPS under the terms of the 1997 agreement, indicating that, without a severance package in a new proposed contract, he was not interested in what the base salary would be.

On September 5, 2001, Mr. Berry told the plaintiff to take the next two days off from work, as other urban executives were coming to Chattanooga for a meeting and Mr. Berry believed it would

be best if the plaintiff was not present since his contract issue had not been resolved. Between September 5, 2001, and September 10, 2001, when the plaintiff returned to work, the locks to the RPS executive offices were changed and the plaintiff was unable to use his key to access the offices.

On September 11, 2001, Mr. Berry sent the plaintiff a memorandum outlining the offers that had been made to him in August, 2001. Following the outline of the proposals, the letter stated, in pertinent part, as follows:

> In conclusion, I want to emphasize again, that I feel that we made you a good and honorable proposal, and it was a mistake for you not to have given it the serious consideration it deserved. From what I detected in our conversation yesterday, you are taking the position and made your decision based upon "it's just the principle" without giving credit to the overall fairness and merits of the offer.
>
> Having said all of the above, since you have no desire to continue with RPS which you indicated, I guess we should part company and get on with life. Although under the circumstances we do not feel that we are required to provide any severance pay, we will pay you up to six (6) months the same as we paid Mark Pratt. This will be paid to you in the same manner in which you are being paid presently, twice monthly, including 50% of your estimated monthly bonus.

The memorandum was signed by Mr. Berry. After receiving the memorandum, the plaintiff began cleaning out his office.

On September 12, 2001, an RPS employee noticed that the central processing unit ("CPU") of the plaintiff's office computer was missing. After being notified of the missing CPU, Mr. Huth became concerned that the plaintiff was attempting to download proprietary information of RPS, and RPS made several attempts to retrieve the CPU from the plaintiff. The plaintiff returned the CPU the following day, explaining that he had been attempting to delete some personal files. An RPS employee deleted the files for the plaintiff after the plaintiff had identified the files that he deemed personal.

RPS then sent the CPU to a data company for analysis. The analysis revealed that the plaintiff had used the computer to access numerous pornography web sites during regular business hours. Upon receipt of this information, Mr. Berry and Mr. Huth determined that the plaintiff was guilty of gross misconduct and had breached his duties as an RPS executive. Accordingly, Mr. Berry sent a letter to the plaintiff dated October 24, 2001, in which Mr. Berry indicated that RPS was terminating all future severance payments on the basis of his gross misconduct.

On November 13, 2001, the plaintiff filed suit against RPS for breach of contract. RPS answered, denying the plaintiff's allegations and raising numerous affirmative defenses. Following

discovery, the plaintiff filed a motion for summary judgment. The trial court granted the plaintiff's motion in a memorandum opinion and order, entered July 31, 2003, finding that the plaintiff was entitled to $795,037.35, less the thirty days severance pay that had previously been paid to him. The amount awarded represented three times the plaintiff's annual salary and bonus, as provided in the Employment Protection Plan referred to in the 1997 agreement. In addition, the trial court awarded the plaintiff prejudgment interest at the rate of 10% per annum from November 13, 2001, which was the date when the complaint was filed.

RPS filed a motion to alter or amend, in which it contended that, if the plaintiff was entitled to recover under the severance pay provision, he should only be awarded an amount equal to twice his annual salary and bonus. RPS premised its argument on the ground that the plaintiff had only been employed under the 1997 agreement for four years, thus entitling him to receive his salary and bonus at a multiple of two, rather than a multiple of three.

The trial court denied RPS's motion, finding that the phrase "years of employment" as used in the Employment Protection Plan clearly and unambiguously meant *total* years of employment, and not simply years of employment *since the 1997 agreement was signed*. Accordingly, the trial court held that the plaintiff was entitled to $786,704.02 (which represents $795,037.35, less the $8,333,33 30-day severance pay), plus $134,928.04 in prejudgment interest, for a total payment of $921,632.06.

From this judgment, RPS appeals.

II.

In deciding whether a grant of summary judgment is appropriate, courts are to determine "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. Courts "must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence." ***Byrd v. Hall***, 847 S.W.2d 208, 210-11 (Tenn. 1993) (citations omitted).

Since summary judgment presents a pure question of law, our review is *de novo* with no presumption of correctness as to the trial court's judgment. ***Gonzales v. Alman Constr. Co.***, 857 S.W.2d 42, 44-45 (Tenn. Ct. App. 1993).

III.

RPS raises several issues on appeal, which can be succinctly stated as follows:

> 1. Did the trial court err in its determination that the plaintiff was discharged by RPS?

2. Did the trial court err in its determination that the plaintiff was entitled to severance pay under the terms of the 1997 agreement?

3. Did the trial court err in its determination that the severance pay provision is a penalty and is therefore unenforceable?

4. Did the trial court err in finding that RPS could not rely on after-acquired evidence in its decision to deny severance pay to the plaintiff?

5. Did the trial court err in awarding the plaintiff three times, rather than two times, his annual salary and bonus?

6. Did the trial court abuse its discretion in awarding the plaintiff prejudgment interest?

We will address each of these issues in turn.

IV.

A.

RPS contends that the trial court erred in its determination that the plaintiff was discharged by RPS. RPS asserts that it did not discharge the plaintiff – it merely "attempted to renegotiate his contract" by offering him employment under such terms "that he could reasonably anticipate earning over a quarter of a million dollars per year." Instead, according to RPS, the plaintiff "refused to continue to work for [RPS] under any terms other than those in [the 1997 agreement]." As such, RPS contends that the plaintiff voluntarily terminated his employment. We disagree with RPS's position.

In August, 2001, the plaintiff was working for RPS under the terms of the 1997 agreement. Mr. Berry and Mr. Huth then approached him and insisted that he sign a new contract of employment. While the new contract included a higher base salary, the territory under his supervision was reduced, his bonus structure was changed, potentially to the plaintiff's detriment, and the severance pay provisions that had been so important to the plaintiff was omitted. When the plaintiff would not agree to this contract, Mr. Berry and Mr. Huth made three other options available to the plaintiff; significantly, none of these options included the possibility of continuing under his current contract of employment – the 1997 agreement. While the plaintiff made it clear that he only wished to remain at RPS under the terms of the 1997 agreement, he continued to come to work each day, as is evinced by Mr. Berry telling the plaintiff to take two days off from work when the urban executives came into town. The plaintiff even returned to work the following week. He did not begin to clear out his office until he received the memorandum from Mr. Berry informing him that the two should "part company and get on with life."

We find that RPS's unwillingness to abide by the plaintiff's 1997 agreement, which was, without dispute, a binding existing employment contract between the parties, was tantamount to discharging him. The plaintiff had an employment contract with RPS, and RPS terminated that contract by attempting to force the plaintiff to agree to a new contract under new terms. The facts of the instant case simply do not bear out the position advanced by RPS that the plaintiff voluntarily terminated his employment. The plaintiff's employment cannot be separated from the terms of his employment contract. They are one and the same as far as the issue of termination is concerned.

The trial court found that RPS had constructively discharged the plaintiff based upon its conduct and treatment of the plaintiff. However, as we find that the facts indicate that RPS actually discharged the plaintiff, we need not reach the issue of constructive discharge.

RPS argues, in the alternative, that there are genuine issues of material fact bearing on the issue of whether the plaintiff was discharged or voluntarily terminated his employment. Viewing all of the evidence in a light most favorable to RPS, as we are constrained to do under a summary judgment standard, we cannot say that reasonable minds could differ as to whether the plaintiff was discharged. *See* ***Byrd***, 847 S.W.2d at 215. The facts before us clearly show a discharge of the plaintiff by RPS. The company told the plaintiff, without equivocation, that his employment, *as memorialized by his contract*, was to be no more.

B.

RPS next asserts that the trial court erred in determining that the plaintiff was entitled to receive severance pay under the terms of the 1997 agreement. RPS argues that the severance pay provision was never triggered "because none of the threshold events, i.e., a change in ownership of [RPS], ever occurred." In support of this argument, RPS directs us to the 1997 agreement, which contains the provision that, in the event the plaintiff is discharged for reasons other than gross misconduct, fraud, embezzlement, theft, or voluntary termination, he will be entitled to receive severance pay "under the terms of the 'Employment Protection Plan – Change in Ownership Structure' provision." Thus, so the argument goes, "the severance pay provision is triggered only by a 'change in ownership structure.'" In further support of its contention, RPS notes that the Employment Protection Plan centers around the sale of RPS or a change in RPS's CEO. Because RPS was never sold and because Mr. Berry remains the CEO of RPS, the severance pay provisions, according to RPS, never came into play. The plaintiff, on the other hand, asserts that the 1997 agreement, by its terms, only intended to incorporate the *payment schedule* found in the Employment Protection Plan, rather than the triggering events contained therein.

It is important to note that "[t]he interpretation of a written agreement is a matter of law and not of fact." ***Rainey v. Stansell***, 836 S.W.2d 117, 118 (Tenn. Ct. App. 1992) (citations omitted); *see also* ***Eyring v. E. Tenn. Baptist Hosp.***, 950 S.W.2d 354, 358 (Tenn. Ct. App. 1997). "The cardinal rule for interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention consistent with legal principles." ***Rainey***, 836 S.W.2d at 118 (citation omitted). The court will look to the material contained within the four corners of the instrument to ascertain its meaning

as an expression of the parties' intent. ***Simonton v. Huff***, 60 S.W.3d 820, 825 (Tenn. Ct. App. 2000). The words of the contract should be given their usual, natural and ordinary meaning. ***Id.*** "All provisions of a contract should be construed as in harmony with each other, if such construction can be reasonably made, so as to avoid repugnancy between the several provisions of a single contract." ***Rainey***, 836 S.W.2d at 119 (citation omitted).

Applying the above principles to the severance pay provisions at issue, we conclude, as did the trial court, that the only reasonable interpretation of the 1997 agreement is that the parties intended to incorporate only the *pay schedule* from the Employment Protection Plan into the 1997 agreement. It is clear that the parties intended that the plaintiff be provided severance pay, provided he was not discharged for gross misconduct, fraud, embezzlement or theft, or voluntarily terminated his employment. The position advanced by RPS – that the plaintiff was only entitled to severance pay in the event the company was sold or Mr. Berry was replaced – is simply untenable. The triggering event in the plaintiff's employment contract was clearly intended to be wrongful termination and wrongful termination only. While severance pay was *also* to be available in the event of a sale of the company or a change in the company's leadership, these triggering events were in addition to, rather than in place of, the event of wrongful termination.

Accordingly, we find that the plaintiff was entitled to receive severance pay under the terms of the 1997 agreement. Moreover, we find that RPS's alternative argument that there is a genuine issue of material fact with respect to the severance pay provision is not well-taken. All of the relevant facts are before us. Those facts, when viewed in a light most favorable to RPS, still show that the plaintiff is entitled to the severance pay awarded by the trial court.

C.

Next, RPS argues that the trial court erred in its determination that the severance pay provisions do not constitute an illegal penalty. We disagree.

In ***Guiliano v. Cleo, Inc.***, the Supreme Court differentiated between liquidated damages as compensation and liquidated damages as a penalty as follows:

> The fundamental purpose of liquidated damages is to provide a means of compensation in the event of a breach where damages would be indeterminable or otherwise difficult to prove. By stipulating in the contract to the damages that might reasonably arise from a breach, the parties essentially estimate the amount of potential damages likely to be sustained by the nonbreaching party. "If the [contract] provision is a reasonable estimate of the damages that would occur from a breach, then the provision is normally construed as an enforceable stipulation for liquidated damages." However, if the stipulated amount is unreasonable in relation to those potential or estimated damages, then it will be treated as a penalty.

Guiliano v. Cleo, Inc., 995 S.W.2d 88, 98 (Tenn. 1999) (quoting ***V.L. Nicholson Co. v. Transon Inv. & Fin. Ltd., Inc.***, 595 S.W.2d 474, 484 (Tenn. 1980) (internal citations omitted). The Supreme Court also set out the difference between liquidated damages and severance pay as follows:

> The term "liquidated damages" is defined by case law as a "sum stipulated and agreed upon by the parties at the time they enter their contract, to be paid to compensate for injuries should a breach occur." The stipulated amount represents an estimate of potential damages in the event of a contractual breach where damages are likely to be uncertain and not easily proven.
>
> In contrast, the recovery of severance pay is not conditioned upon a breach of contract or a reasonable estimation of damages. Generally, severance pay is a form of compensation paid by an employer to an employee at a time when the employment relationship is terminated through no fault of the employee. The reason for severance pay is to offset the employee's monetary losses attributable to the dismissal from employment and to recompense the employee for any period of time when he or she is out of work. The amount of payment is generally based upon the types of services and the number of service years performed by the employee on behalf of the employer.

Guiliano, 995 S.W.2d at 96-97 (internal citations omitted).

Applying these definitions to the instant case, it is clear that the severance pay provisions are not a penalty. The 1997 agreement states that the plaintiff will be entitled to severance pay if he is discharged for reasons other than gross misconduct, fraud, etc. – in other words, the plaintiff will receive the severance pay if he is "terminated through no fault" of his own. *See* ***id.*** at 97. The amount of severance pay as set forth in the Employment Protection Plan is based upon the plaintiff's salary and bonuses, commensurate with "the number of service years performed by" the plaintiff. *See* ***id.*** Accordingly, we find no error in the trial court's determination that the severance pay provisions do not constitute an illegal penalty. Furthermore, we reject RPS's suggestion that the issue of whether the severance pay provisions amount to an illegal penalty is a question of fact that would preclude summary judgment. The material facts on this issue are not in dispute. Those facts support only one conclusion – the one reached by the trial court. This is a question of law and it was correctly resolved by the trial court.

D.

RPS next contends that the trial court erred in finding that RPS could not rely on after-acquired evidence in its decision to deny severance pay to the plaintiff. *After the plaintiff was discharged*, RPS learned that he had been using the company's computer during regular business hours to access pornographic web sites. RPS argues that, had it known that the plaintiff was

accessing these web sites, it would have discharged him for engaging in gross misconduct, in violation of company policy. Therefore, RPS asserts that the plaintiff is not entitled to received any severance pay, as "gross misconduct" is excepted from the provision.

The issue of the use of "after-acquired evidence"in employment matters is a matter of first impression in Tennessee.[1] The trial court noted the following with respect to this doctrine:

> The "after-acquired evidence" doctrine has been used in wrongful discharge and employment discrimination cases in an effort to limit or bar recovery by plaintiffs. There are no Tennessee cases that address the "after-acquired evidence" doctrine. Various state courts and federal circuits have a wide array of opinions regarding the admissibility and effect of "after-acquired evidence." Some jurisdictions will not admit "after-acquired evidence," others have held that it can serve as a complete bar to recovery, while others have held that it can only be used to limit damages. The case of ***Lewis v. Fisher Service Co.***, 495 S.E.2d 440 (S.C. 1998), provides a good overview of the history and varied views of the "after-acquired evidence" issue: . . .

Thereupon, the trial court quoted extensively from the ***Lewis*** opinion, in which the South Carolina Supreme Court, after reviewing the status of the law of after-acquired evidence, found as follows:

> Although we find that after-acquired evidence should be admissible on the issue of liability, we recognize the potential dangers of allowing employers unrestricted use of such evidence. If free reign were given, then in defending breach of employment contract actions, less-than-principled employers (or their attorneys) may be tempted to "rummage the file" in order to "discover" any and all evidence that would permit them to escape liability. For example, an employer that has been inclined to overlook his employees' peccadillos (e.g. occasional tardiness), might suddenly claim, in response to a breach of contract action, that the employee would have been fired had the employer been aware of the tardiness. Thus, we conclude that although after-acquired evidence should be allowed on the issue of liability, certain limitations must be put into place so as to prevent abuse by employers. This can be achieved by restricting use of after-acquired evidence in two ways. First, the employer must prove that

[1] While this court has previously noted in another case that the issue of after-acquired evidence was a matter of first impression in this state, the court in that case never reached the issue and, thus, the issue remains one of first impression. *See* ***Booth v. Fred's, Inc.***, No. W2002-01414-COA-R3-CV, 2003 WL 21998410, at *15-*16 (Tenn. Ct. App. W.S., filed August 19, 2003).

> the wrongdoing was significant, that it was of "such severity that the employee in fact would have been terminated on those grounds alone if the employer had known of it at the time of the discharge." *See* ***Baber [v. Greenville County]***, 327 S.C. [31], 488 S.E.2d [314,] 320 (quoting ***McKennon [v. Nashville Banner Publ'g Co.***, 513 U.S. 352, 115 S. Ct. 879, 130 L. Ed. 2d 852 (1995)]). Thus, evidence of employee wrongdoing that would not have resulted in termination would not be admissible. Second, this proof must be established, not by a preponderance of the evidence, but by clear and convincing evidence. We believe that these two limitations will serve to exclude doubtful or insignificant evidence of employee wrongdoing, while allowing evidence of very severe wrongdoing that should properly be considered.

Lewis, 495 S.E.2d at 445.

The trial court, in determining that the approach taken in ***Lewis*** was well-reasoned, decided to follow it and apply the clear and convincing standard to the evidence of the plaintiff's wrongdoing. The trial court noted that Mr. Berry, in his deposition, admitted that he would still like to have the plaintiff back at RPS. The court found that this admission "cast[] deep doubts in the court's mind regarding Mr. Berry's statements that he would have fired [the plaintiff] for viewing the pornographic images on his company computer." The trial court was further persuaded by RPS's failure to take additional steps to notify other RPS employees "that such use of RPS computers is inappropriate and will result in immediate termination." Finally, the trial court noted that "it is undisputed that the year ending on December 31, 2000, was the highest record of profit that the urban division of RPS had ever experienced" and that the urban division "showed steady growth from the time the [p]laintiff took over through the first seven months of 2001." The trial court then concluded that, based on these facts, "reasonable minds could not differ that RPS cannot prove by clear and convincing evidence that [the plaintiff] would have been fired from RPS," and the court held that the after-acquired evidence was thus inadmissible.

We agree wholeheartedly with the approach taken by the trial court. We believe that the adoption of the ***Lewis*** standard, while stringent, is necessary to prevent employers from inventing reasons to justify a discharge after-the-fact of termination. We therefore hold that, when an employer wishes to use after-acquired evidence to prove grounds for dismissal, the employer must show, by clear and convincing evidence, that the wrongdoing was so severe that the employee would have been discharged on that ground alone if it had been known to the employer at the time of the termination.

Applying this standard to the instant case, we agree with the trial court that reasonable minds could only agree that there was no clear and convincing evidence that the plaintiff would have been discharged solely for viewing pornography on his computer. Accordingly, RPS is not entitled to use this after-acquired evidence in its attempt to show that the plaintiff engaged in gross misconduct.

E.

Next, RPS asserts that the trial court erred in awarding the plaintiff three times his annual salary and bonus under the severance pay provision. Instead, RPS contends that the plaintiff was only entitled to receive twice his annual salary and bonus. RPS arrives at this position by pointing out that the effective date of the 1997 agreement was January 1, 1997 and that the "years of employment" mentioned in the severance pay provisions of the Employment Protection Plan, according to RPS, refer only to the years of service beginning with January 1, 1997. Under this interpretation, the plaintiff would only be entitled to twice his annual salary and bonus because, as of September, 2001, the plaintiff had only been operating under the 1997 agreement for four years.

We agree with the trial court that the phrase "years of employment" is not ambiguous. It refers to the *total number of years* the plaintiff has been employed by RPS, which, at the time of his discharge, amounted to over five years. The position advanced by RPS is without merit. Accordingly, we find no error in the trial court's decision to award the plaintiff three times his annual salary and bonus under the terms of the severance pay provisions.

F.

Finally, RPS argues that the trial court abused its discretion in awarding the plaintiff prejudgment interest. We disagree.

The decision of whether to award prejudgment interest is within the sound discretion of the trial court and will not be disturbed by an appellate court absent "a manifest and palpable abuse of discretion." ***Myint v. Allstate Ins. Co.***, 970 S.W.2d 920, 927 (Tenn. 1998). "A trial court acts within its discretion when it applies the correct legal standard and reaches a decision that is not clearly unreasonable." ***Bogan v. Bogan***, 60 S.W.3d 721, 733 (Tenn. 2001). An award of prejudgment interest is proper "when the amount of the obligation is certain, or can be ascertained by a proper accounting, and the amount is not disputed on reasonable grounds." ***Myint***, 970 S.W.2d at 927 (citation omitted). In the instant case, the trial court, relying upon the authority of ***Myint***, determined that an award of prejudgment interest was proper because "the amount owed to [the plaintiff] under [the 1997 agreement] was easily ascertained by a proper accounting." We cannot say that this decision was "clearly unreasonable." *See* ***Bogan***, 60 S.W.3d at 733. We find no abuse of discretion in the trial court's award of prejudgment interest.

V.

The material facts in this case are not in dispute. Put another way, there are no genuine issues of material fact. The material facts before us fully support the trial court's grant of summary judgment.

VI.

The judgment of the chancery court is affirmed. This case is remanded for the enforcement of the chancery court's judgment and for the collection of costs assessed below, all pursuant to applicable law. Costs on appeal are taxed to the appellant, Republic Parking System, Inc.

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CHARLES D. SUSANO, JR., JUDGE